

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

(Pleasanton, California)

CALIFORNIA NEWSPAPER PARTNERSHIP  
d/b/a ANG NEWSPAPERS

Employer<sup>1</sup>

and

GRAPHIC COMMUNICATIONS  
INTERNATIONAL UNION,  
LOCAL 583, AFL-CIO

Case 32-RC-4951

Petitioner

and

NORTHERN CALIFORNIA MEDIA  
WORKERS GUILD/TYPOGRAPHICAL  
UNION, CWA LOCAL 39521

Intervenor

DECISION AND DIRECTION OF ELECTION

Graphic Communications International Union, Local 583, AFL-CIO filed a petition under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit limited to 30 of the 36 prepress department employees employed by the California Newspaper Partnership d/b/a ANG Newspapers. Northern California Media Workers Guild/Typographical Union, Local 39521, CWA intervened in these proceedings as the Section 9(c) representative of the 6 Prepress Department employees not sought to be represented by Petitioner. The primary issues in this case are: 1) whether the Prepress

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<sup>1</sup> The name of the Employer appears as corrected at the hearing.

Department employees who are not represented by Intervenor constitute an appropriate unit; 2) whether the Prepress Department employees represented by the Intervenor should be included in the unit found appropriate; 3) whether couriers who spend most of their work day driving share a sufficient community of interest to be included in the unit sought by Petitioner; and 4) whether Angela Newman, Joan Kelly, Rick Martin, and Jim Williams should be excluded from the unit as supervisory employees within the meaning of Section 2(11) of the Act. As set forth fully below, I conclude the currently unrepresented Prepress Department employees do constitute an appropriate unit in which couriers should be included; that Prepress Department employees currently represented by the Intervenor need not be included in the unit found appropriate herein; and that Newman, Kelly, Martin and Williams will be allowed to vote subject to challenge.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:<sup>2</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. California Newspaper Partnership d/b/a ANG Newspapers, a California Partnership, hereafter called the Employer, with its principle place of business in Woodland Hills, California, and a facility in Pleasanton, California, is engaged in the publication and sale of newspapers of general circulation. During the past twelve months the Employer has

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<sup>2</sup> The Intervenor timely submitted a letter of position, in lieu of brief, on March 22, 2002. The Employer and Petitioner timely submitted briefs on March 25, 2002. However, on March 26, 2002, Petitioner sent the Acting Regional Director a letter with an attached document in support of its position without making a motion to re-open the record to receive the document. Nor was there a request made at the hearing to receive the document as a late-filed exhibit. Accordingly, Petitioner's March 26, 2002 correspondence is not a part of the record herein and was not considered by the undersigned in making the instant findings.

derived gross revenues in excess of \$200,000 from its business operations. During the same period of time, the Employer has advertised nationally sold products and has purchased and received goods valued in excess of \$100,000 directly from suppliers located outside the state of California. I find, therefore, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner seeks to represent a unit of all full-time and regular part-time proof readers, image technicians, couriers, floor runners, graphic artists, MAC operators, strippers, classified paginators, newsmaker paginators, leads, layout assistants, typists, plate makers, mailroom clerks, Harris operators, readers, and administrative assistants employed at the Employer's Pleasanton, California facility, excluding all other employees, office clerical employees, guards, and supervisors as defined by the Act. A question affecting commerce exists concerning the representation of certain of these employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Intervenor contends that the six Prepress Department employees, who are represented by the Intervenor for purposes of collective bargaining, should not be included in the unit sought by Petitioner.

6. The Employer and Petitioner stipulated that the six employees represented by the Intervenor should not be included in any unit found appropriate herein. However, the Employer contends that the May 17, 1999 to May 16, 2002 collective bargaining agreement between it and the Intervenor may constitute a contract bar to the instant petition. The Employer also seeks a determination by the undersigned that the Intervenor has waived its

right, now and in the future, to reassert recognition rights to “composing room” work except as to the specific employees now covered by the Intervenor’s collective bargaining agreement with the Employer. The Employer further contends that the couriers sought to be represented by Petitioner do not share a sufficient community of interest to include them in the petitioned-for unit. Finally, the Employer contends that Angela Newman, Joan Kelly, Rick Martin, and Jim Williams are supervisory employees within the meaning of Section 2(11) of the Act, while the Petitioner contends that they are not Section 2(11) supervisors. Petitioner contends that the couriers share a sufficient community of interest to be included in the petitioned for unit and contends that Angela Newman, Joan Kelly, Rick Martin, and Jim Williams are employees as defined in the Act.

## FACTS

### The Collective Bargaining History

The Employer publishes several newspapers from numerous facilities in Northern California. Prior to 1989, the Employer had a composing room at its Hayward location where employees assembled articles and advertising. The function of the composing room was to design the layout of the newspaper for publication by its press room. The composing room employees were represented by the Intervenor and covered by a collective bargaining agreement between it and the Employer that was effective from January 2, 1989 to December 23, 1993. During this same period, the Employer also had an office in Pleasanton, California; however, during that period the Pleasanton office had no production facilities. Sometime during 1989, the Pleasanton office was remodeled to include production capabilities. The functions of the Employer’s Hayward composing room, as well as its advertising services

department were combined to create a “Prepress” Department, and this new department was transferred to the Pleasanton location, hereafter called the Facility. Employees employed in the Hayward composing room, and employees employed at other Northern California locations, were transferred to the Prepress Department at the Facility. In addition, new employees were hired and assigned to the Prepress Department.

The record indicates that after the move, the Employer did not apply its 1989 to 1993 agreement with the Intervenor to the employees employed in the newly configured Prepress Department at the Facility. Thus, the Intervenor filed a grievance seeking to extend the 1989 to 1993 agreement to the Facility. The grievance was resolved in late 1989 by the execution of a new agreement, effective December 1, 1989 to November 30, 1994, covering all composing room employees, notwithstanding the fact that the composing room no longer existed at either the Employer’s Hayward location or the Facility. Said agreement was applied to the employees who had transferred from the Hayward composing room to the Facility, as well as to one or two other employees who were hired as new unit employees, hereafter collectively called the Intervenor-Unit. The 1989 to 1994 agreement covered all Intervenor-Unit work, even as modified due to anticipated changes in technology. In addition, the 1989 to 1994 agreement specifically stated that the Intervenor-Unit employees did not have the exclusive right to the type of work performed by the employees in the Intervenor-Unit and gave the Employer the right to transfer Intervenor-Unit work to non Intervenor-Unit employees, which right the Employer has exercised through the years. Accordingly, the current employees represented by the Intervenor have the same job title, job function, responsibilities, and share the same supervision as non-Intervenor-Unit employees sought to be represented by Petitioner in the Prepress Department. As such, the Prepress

Department includes six Intervenor-Unit employees: John Vivian and Jon Squires, ad operators; Bob Dwyer, an image technician; Fahim Bukhsh, a plate maker; and Jim Rearich and Jim Richmond, computer technicians.<sup>3</sup> Four of these six, Vivian, Squires, Dwyer, and Bukhsh work side-by-side with the 30 unrepresented Prepress Department employees sought to be represented by Petitioner, who also work as ad operators, image technicians, and plate makers. Rearich and Richmond are the only computer technicians employed at the Facility. As such, there are no unrepresented computer technicians sought to be represented by Petitioner. The 30 currently unrepresented Prepress Department employees in the petitioned-for unit have not previously been represented by any labor organization.

The record reflects that the Employer has continued to recognize the Intervenor as the Section 9(a) collective bargaining representative of the Intervenor-Unit employees from 1989 to the present. That relationship has been embodied in a series of collective bargaining agreements, culminating in the May 17, 1999 to May 16, 2002 collective bargaining agreement, hereafter called the Agreement.<sup>4</sup> The record further reflects that in negotiations for a successor agreement in February 2002, the Intervenor sought to remove the language in the Agreement that permitted the Employer to assign any Prepress Department work to employees who were not in the Intervenor-Unit. The Employer rejected the Intervenor's proposal and sought to retain the Agreement's composing room unit description, unit work

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<sup>3</sup> In 1989, the Intervenor-unit included at least 33 employees. In most instances, when these employees resigned, retired, or were promoted, etc., the Employer hired a new employee to perform that work, however, pursuant to its rights under the 1989 to 1994 Agreement, the Employer did not include the new employee in the Intervenor - Unit. The Intervenor permitted the Employer to take this action.

<sup>4</sup> An issue arose at hearing as to whether the Agreement is a "members only" contract. The record is clear that the Agreement does not restrict the application of any of its terms to members of the Intervenor. As such, it cannot be concluded that the Agreement is a members only agreement. See Hebron Brick Company, 135 NLRB 245 (1962); Post Houses, Inc., 173 NLRB 1320 (1968).

language and work transfer provisions. The bargaining over the new collective bargaining agreement was ongoing as of the close of the hearing in this case.

#### The Employer's Prepress Department Operation

The Prepress Department, located on the second floor of the Facility's two-story structure, is responsible for receiving space reservations from the Advertising and Editorial Departments and for designing the layout of the six daily newspapers published by the Employer. The manager of the Prepress Department is Sylvia Zavala. Two assistant managers report to her: Jennifer Anderson-Jeys and Connie Fordyce. In addition, Mehen Prasad is the layout coordinator and Sandy Smith is the daytime supervisor. The Employer and Petitioner stipulated and I find that these individuals possess supervisory authority within the meaning of Section 2(11) of the Act. In addition, the parties stipulated, and I find that the one administrative assistant employed in the Prepress Department, Danette Marty, is a confidential employee. Accordingly, Zavala, Anderson-Jeys, Fordyce, Prasad, Smith and Marty are excluded from the unit found appropriate herein.

The Prepress Department employs six advertisement services employees who receive advertising material from outside sales reps and distribute it within the department. They also provide customer service to sales reps in the Advertising Department by investigating the status of advertisements that are already in the prepress system. Advertisement services employees convey any revisions requested by customers to other Prepress Department employees working on a particular advertisement.

At the beginning of the design process, the Employer's five Prepress Department layout clerks reserve space in the paper for advertisements scheduled to be printed. Once the

space is designated, the layout clerks electronically send pages to the Editorial Department, which places text around the advertisement and returns the pages to the Prepress Department.

Although the Employer does not employ graphic artists in its Prepress Department, its eleven ad operators perform the same function as graphic artists employed by other employers in the industry. Thus the ad operators design and revise advertising according to specifications. There are two types of ad operators: Harris operators who operate personal computers that use MacIntosh software, and MAC operators who operate Macintosh computers with Illustrator Creator and Photo Shop software. Two ad operators, John Vivian and Jon Squires, are represented by the Intervenor.

Ad operators also perform as readers. Readers preview an advertisement in the Harris system to ensure that it is the correct size for the space reserved. Readers also place advertisements onto the appropriate page, after the page is returned from the Editorial Department with the inserted text.

There are two paginators employed in the Prepress Department. Paginators “flow” the information on classified advertisements onto a page they have designed using the MACTIVE pagination system. They are responsible for making sure that classified advertisements are in the correct specifications.

On occasion, the Employer receives advertising that has already been designed by graphic artists employed by outside agencies, which then send the advertisements to the Prepress Department electronically. The Employer’s five imaging technicians, one of whom, Bob Dwyer, is represented by the Intervenor, are responsible for retrieving, reviewing, resizing, and enhancing the outside advertisements so that their format is compatible with the Harris system.



The Prepress Department also employs three proof readers who review advertising copy for errors using standard proof reading marks and one typist who types advertising copy when it consists solely of text.

Finally, once a page is completed, a negative film is taken. A particular negative may originate at the Facility or at one of the Employer's other locations, in which case it is sent via electronic transmission or picked up by one of the Prepress Department couriers, discussed below, and brought to the Facility. The negative film is received by the Employer's five plate makers, one of whom, Fahim Bukhsh, is represented by the Intervenor. The plate makers review the accuracy of the page. In addition, plate makers also perform as strippers by taking material from one page and placing in onto another. If everything is correct, plate makers burn the negative onto an aluminum plate. The plates are then sent to the press room to be printed.

The Employer also employs five couriers as Prepress Department employees. They report to the first floor courier station at the Facility. The couriers report to Angela Newman, whose supervisory status is discussed below. Newman reports to Fordyce, Smith and Zavala. Zavala, or one of the other managers interview and hire new couriers. The couriers are administratively part of the Prepress Department and are paid out of its payroll budget. All the Prepress Department employees are paid on a hourly basis, although the record does not set forth the hourly rate for each prepress department classification. The record reflects that the couriers are paid about 15% less than the other prepress department employees. All of the unrepresented Prepress Department employees, including the couriers, receive the same health insurance benefits and are all eligible for the Employer's 401(k), life insurance, and tuition plans.

The couriers appear on the employee and birthday lists for the Prepress Department employees.

The couriers begin and end each day at the Facility, where their vehicles are parked, fueled, and maintained. The couriers spend between 10 to 15 minutes at the Facility on a daily basis. However, most of their day is spent driving company owned vehicles from location to location delivering inter-office mail between the Employer's Northern California facilities. In addition, couriers deliver post office mail to the receptionists at various facilities and drop off outgoing mail to post offices. Finally, they deliver advertising materials sent to or sent by the Prepress Department employees, including negatives, advertisements, proofs, and documents. When they make deliveries to the Prepress Department, which is on average, four to five times a day, they go up to the second floor and scan the delivered material on a universal code scanner located at a desk at the entrance to the Prepress Department. The couriers pick up Prepress Department materials that are to be delivered elsewhere at the first-floor courier station. Although couriers have regular daily contact with other Prepress Department employees, such contact is not necessary in order for them to perform their pick-up, delivery, and scanning duties. The routes of two couriers allow them to have their lunch period in the lunch room with other Prepress Department employees. The other three couriers take their lunch break away from the Facility.

Although the Employer does not consider the courier classification to be the Prepress Department entry level position, the record reflects that there has been at least some transfers from the courier classification to other Prepress Department classifications. Thus, one courier was transferred to an imaging technician position and another courier was transferred to an advertising services position. In addition, Prepress Department employees perform temporary

substitutions for couriers when needed. Thus, the record reflects that five Prepress Department employees, including ad operators, image technicians, and advertising services employees have performed courier duties by leaving the facility to service delivery routes. In addition, stipulated day supervisor Sandy Smith, and disputed week end supervisor Rick Martin, discussed below, have on occasion left the Facility to perform courier route duties.

#### The Responsibilities of Newman, Kelly, Martin, and Williams

##### Angela Newman

Newman was transferred from the Employer's Oakland, California location to the Facility in August 2000 as the courier supervisor. She is paid an hourly rate that is 25% to 30% higher than that of the other couriers. Newman's shift is between 8:00 a.m. and 5:30 p.m., Monday through Friday. The other couriers' shifts last from 8:00 a.m. to 7:00 p.m., Monday through Friday. Newman is assigned to the courier desk on the first floor of the Facility where the other couriers report at the beginning of their shifts. Newman is also responsible for maintaining and washing the courier vehicles. She has a pager and a voice mail number for couriers to reach her during the day. However, Newman is also assigned to a courier route and spends between 60% and 75% percent of her day making deliveries. When Newman is absent, Fordyce or Smith supervise the couriers.

The record reflects that Newman has no authority to hire, fire, transfer, promote, lay off, recall, or grant pay increases to the couriers, or to recommend such actions. Those authorities are reserved by Zavala and Fordyce. Newman has attended one supervisor meeting, about a year ago.

The record also indicates that courier routes were initially established by the Advertising Department. More recently, Zavala, Sandy Ferris (former assistant prepress

manager), Fordyce, and administrative assistant Marty determined the routes. Each route is permanent and has a designated shift and schedule for the assigned courier. Newman advised these managers what runs needed to be covered, and they used that information to create the permanent routes with assigned schedules. The record does not indicate that Newman was the one who decided which couriers were to be assigned to their respective permanent routes. However, when couriers fail to report to work, or are delayed in making their scheduled runs, Newman reassigns their runs to other couriers to ensure that all deliveries are covered.

If a courier needs time off during the day, he or she makes a request for time off to Newman. Newman decides whether the employee will be given the time off. The record does not establish on what basis she makes such a determination.

The record is equivocal with respect to Newman's authority to grant vacation. Thus, Zavala testified that Newman can decide on her own whether to approve a vacation request from a courier. According to Zavala, Newman does so by checking the schedule to see if there are sufficient couriers to covers the runs during the vacation time requested. If there are, she forwards the request to Fordyce who posts the requested vacation time on a master vacation calendar. If there are not enough couriers to cover the runs, Newman returns the vacation request to the courier and directs that they select alternate vacation dates. She does not consult with Zavala, Fordyce or Smith in taking these actions. However, contrary to Zavala's testimony, Newman testified that she has no authority to grant vacation time.

In the past, Newman was responsible for reviewing, approving corrections as to accuracy, and signing couriers' time cards. She also resolved any discrepancies between hours actually worked and hours recorded on the time cards. However, the courier payroll is processed by department managers. The record indicates that when Zavala became prepress

department manager in January 2002, Smith told Newman that she no longer had responsibility for courier time cards, which were from that point maintained on the second floor rather than at the courier station.

The record reflects that Newman has the authority to direct a courier to work overtime. The record does not indicate how often Newman directs that overtime be worked, or whether there are any outstanding directives from management as to when overtime should be worked and by whom. However, the last time she directed an employee to work overtime was on February 28. Newman also has the authority to decide to stop a run in order to avoid incurring overtime. She is required to advise Zavala that she has eliminated a run so that managers will be able to inform relevant Prepress Department staff members that the run will not be made. However, according to Zavala, Newman is not required to get prior permission to eliminate the run. The record does not show what criteria Newman is to apply in making such decisions.

During certain time periods, Newman has been responsible for writing employee performance reviews. During such periods, Newman submits her written draft review to Fordyce. Fordyce reviews the evaluation, makes corrections and revisions, and returns it to Newman. Thereafter, Newman signs the review as the evaluation as the “reviewer”. Fordyce signs as the “manager”. Newman meets with the employee and presents the review by reading it to them. The record indicates that between November 2000 and October 2001, Newman performed 9 reviews. The record also indicates that sometime in late November, 2001, Ferris told Newman that she was no longer to draft and present employee reviews because only managers were going to evaluate employees. However, recently, sometime in mid February 2002, she was specifically directed by Fordyce to draft a courier review.

Currently, Newman is no longer authorized to present the evaluation to a courier unless Zavala or Fordyce is present at the evaluation meeting. There is no evidence in the record that any of the reviews performed by Newman were used to take any action with respect to the reviewed employees' job status or were used to determine pay increases.

Newman signs off on written employee discipline under the space designated "supervisor". However, she is not responsible for drafting the discipline. That responsibility is performed by Fordyce or Zavala. In some cases Newman is unaware of the underlying misconduct until she is requested to sign the written discipline by Fordyce. Newman is present at disciplinary meetings during which the employee receives the write up, but does not say anything at such meetings, which are conducted by Fordyce and/or Zavala.

In one particular case, Newman observed an employee at a McDonald's Restaurant during the employee's working time. She told Fordyce what she had seen. Fordyce directed Newman to orally reprimand the employee. Fordyce directed Newman to keep her apprised of the employee's conduct. Later, Fordyce issued a written warning to the same employee for unrelated misconduct that had not reported by Newman. Newman was required to sign that warning. At no time did Newman recommend to Fordyce that any particular disciplinary action be taken regarding this employee. To the contrary, on many occasions, Newman sought direction from Fordyce, as well as Ferris, as to what she should do regarding the employee's conduct. There is no evidence concerning Newman making recommendations concerning the discipline of other couriers.

The record indicates that Newman is responsible for investigating automobile accidents involving couriers. The record indicates that Newman has filled out one "Manager's Vehicle Accident Interview Report" in which she noted that she had reviewed the

accident with the driver. However, there is no evidence that Newman is authorized to take disciplinary action against employees with respect to such accidents, or that the report was used as the basis for any discipline.

Newman testified that she no longer believes she is a supervisor because of the changes in her authority to evaluate employees, the removal of her time card responsibilities, her limited role in employee discipline, and because she does not grant vacations.

Joan Kelly

Kelly has worked for the Employer for about 8 years. It is undisputed that for 3 years prior to December 2001, Kelly was the layout supervisor of the 5 layout clerks in the Prepress Department. Kelly earns approximately \$18.00 per hour. The layout clerks who reported to her earn between \$10.50 and \$14.00 per hour.

As the layout supervisor, she prepared 5 employee evaluations between August 2000 and October 2001. She signed the evaluations as “reviewer” and Fordyce signed as “manager.” There is no evidence in the record that any of the reviews prepared by Kelly were used to take any action with respect to the reviewed employees’ job status or to grant pay increases.

As layout supervisor Kelly had no authority to terminate employees, however the record reflects that she recommended to Fordyce that a layout clerk be terminated. The layout clerk was terminated. However, the record does not indicate whether Fordyce independently investigated the circumstances that led to Kelly’s recommendation before Fordyce terminated the layout clerk.

The record also establishes that on February 12, and July 25, 2001, Kelly issued written attendance discipline to two Prepress Department employees. The record does not

show what discretion, if any, that Kelly exercised in giving employees written attendance discipline.

There is much conflicting record evidence concerning Kelly's status within the Prepress Department since November 2001, and regarding her current status. Thus, Kelly testified that on November 2, 2001, she was reassigned indefinitely to work as a classified paginator in order to be cross trained in the MACTIVE pagination system. Nevertheless, after the reassignment, for a short period of time, she went back and forth between her duties as layout supervisor and pagination training.

The record also reflects that in late 2001, effective January 2002, it was announced that Zavala would be the new Prepress Department manager and that Fordyce would be reassigned from Prepress Department manager to assistant manager. At a meeting with Zavala and Ferris on December 27, 2001, Kelly testified that Zavala advised her that, effective immediately, she was no longer the layout supervisor as there was no need to have a layout supervisor since Zavala's new work station was near layout, and she could oversee the lay out employees. Zavala further stated that Kelly would keep the same rate of pay but would continue to be pulled out of pagination to work in layout, as needed. A few days later, it was announced that Prasad was the new layout coordinator. Around this time, Dennis Miller, Senior Vice-President in Charge of Production, told Kelly that despite the organizational changes, he still considered her to be a supervisor.

After the changes were implemented, regular supervisory meetings were discontinued for several weeks. However, in early February 2002, Kelly was invited to attend four supervisor meetings. At one meeting conducted by Fordyce, and also attended by Prasad, Fordyce told them both that they were being held accountable for layout operations. At a



more recent meeting about technical work issues, Zavala told Kelly and Prasad that she expected them to work out the layout problems and to make layout a success.

Kelly further testified that in early February 2002, she completed pagination training but was returned to layout as a clerk. She has performed layout clerk duties since then and has not trained any other employees on the pagination system. For the period from December 27, when Kelly contends she was told she was no longer the layout supervisor, to the dates of the hearing, there is nothing in the record to establish that she directed employees' work, assigned work to employees, evaluated employees, disciplined employees, recommended such actions, or otherwise exercised any supervisory duties. Moreover, at a staff meeting in January 2002, the record establishes that Zavala distributed a flow chart, which showed that layout employees in the Prepress Department no longer reported to Kelly.

In contrast, Zavala testified that Kelly is still the current layout supervisor and denied that she ever told Kelly that she no longer held the layout supervisor position. She further testified that Kelly is still being trained in pagination. According to Zavala, when Kelly completes that training, Kelly will supervise the paginators, and Prasad will supervise the layout clerks. Thus, Zavala testified that at that point, Kelly will train other layout employees to use the MACTIVE system. Zavala also testified that Kelly will then be authorized to use the Employer's progressive disciplinary system, if the newly trained employees fail to meet the Employer's performance expectations.

#### Rick Martin

Rick Martin has been employed by the employer for 2 years. The record reflects that when he was hired as the Prepress Department night shift supervisor, he brought 25 years of industry experience in press operations, including apparent supervisory or leadperson

experience. Martin works from 10:00 p.m. to 2:00 a.m. on Tuesday and Thursday, and 5:30 p.m. to 2:00 a.m., Wednesday through Sunday. When he was hired he was told that his job was to do what ever is necessary to get the paper out at night, and he directs all job classifications present on the floor during his shift. However, during part of his weekday shifts, Martin is not the only person present who has authority in the Prepress Department. Anderson-Jeys, who became Assistant Night Manager on February 4, 2002, works Monday through Friday, 4:30 p.m. to midnight. Zavala is also present during the week at night, some nights until 9:00 p.m. After Anderson-Jeys finishes her shift, Tuesday through Friday and during the entire night shift on Saturdays and Sundays, Martin is the only person in authority at the facility.

Martin has been directed to contact Zavala or Fordyce if any problems arise on the shift, after Anderson-Jeys leaves the Facility during the week, and on week ends. According to Zavala's testimony, at the time she became Prepress Department Manager in January 2002, Martin called her about three times a week. More recently, he only calls about once per month. The calls he makes are related to technical issues with getting the paper out. In contrast, according to Martin's testimony, prior to Anderson-Jeys becoming Assistant Night Manager, Martin called Zavala one or two times a night when problems arose on the night shift that he could not resolve. For example, if a colored advertisement was run in black and white, he would call Zavala and she would advise him whether it should be re run or left as it was. Since Anderson-Jeys became the Assistant Night Manager, Martin calls her on week ends when problems arise.

There are 15 to 20 employees on Martin's shift Tuesday through Friday, and 5 employees assigned to his shift on Saturday and Sunday. Martin spends between 30% and

40% of his time trouble shooting and solving technical problems. He spends 60% to 70% percent of his time performing Prepress Department work himself. He spends, at the most, 5% of his time on personnel matters.<sup>5</sup> Martin earns an hourly rate about 40% higher than the highest paid department employees and 80% higher than the lowest paid Prepress Department employees.

Martin is authorized to direct an employee to leave his or her assigned work to assist another employee who may otherwise be unable to complete their work by the deadline. He is not required to get approval to make reassignments from either Zavala, Anderson-Jeys, or Fordyce. However, the record reflects that Martin has never exercised this authority as the night shift employees rarely fall behind. If they do, he assists them himself, rather than assigning someone else to assist them.

Recently, when the shift was short a courier, Zavala directed Martin to assign courier responsibilities duties to one of three employees on his shift. Instead, Martin asked the three employees which of them wanted to volunteer for the assignment.

There is also evidence that Martin has the authority to direct the working of overtime on the night shift. He does not need prior authorization from either Anderson-Jeys or Zavala to direct that overtime be worked, although he is required to advise Zavala as to what problems occurred that led to the working of overtime. The record does not indicate what guidelines, if any, Martin is to follow in deciding whether to authorize overtime and in deciding who will be assigned to work the overtime. There is also no evidence regarding

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<sup>5</sup> Martin is skilled as a Harris operator, ad services employee, and paginator. He assists whichever employees need help or are behind in doing their work. He troubleshoots ads that are incorrect or problematic in any way by correcting them.

whether, how often, or under what circumstances Martin has directed employees to work overtime.

The record is inconsistent as to whether employees who cannot work due to illness call in to Martin to report their absence or whether employees who need to leave prior to the end of their shift ask Martin for approval. Zavala testified that week end night shift employees report such matters to Martin, while Martin testified that employees do not and have never reported such matters to him.

If disciplinary problems arise, Martin has standing instructions to send employees home for the evening, in which case, Fordyce is responsible for handling the Employer's response the next day. The record does not disclose what guidelines, if any, Martin is to follow in determining what type of misconduct warrants sending employees home and there is no evidence regarding whether he has ever sent an employee home for misconduct. whether Martin has ever sent any employees home. On February 16, 2001, Martin signed an "Attendance Policy Notification of Violation" form that was apparently issued to an employee who had reached the level of 2 to 5 attendance occurrences in a 12 month period. The Notification constituted a verbal warning and was also signed by Fordyce. The record does not indicate the circumstances concerning the generation of the verbal warning and what relative roles were played in the issuance of the discipline by Fordyce and Martin.

The record reflects that Martin drafted about 7 employee reviews between December 2000 and November 2001 and submitted them to Fordyce for corrections and revisions. After the revisions had been made, Martin signed the reviews as "supervisor", Fordyce signed as "manager", and Martin presented the reviews to the respective employees. There is no

evidence in the record that any of the reviews performed by Martin were used to take any action with respect to the reviewed employee's job status or to determine pay adjustments.

Martin, like Kelly, testified that the Employer's January 2002 managerial reorganization resulted in Zavala advising him that he was no longer a supervisor. Again, Zavala denied that she ever advised him that he was no longer a supervisor. Martin further testified that after the reorganization, he no longer attended certain supervisory meetings, was not copied on E-mail reports, and stopped performing employee reviews. In any event, there is no dispute that about a week before his testimony at the instant hearing, Zavala reinstated him to his former position as supervisor. As such, there is no ambiguity as to Martin's current status.

#### Jim Williams

Williams has been employed as a Harris operator in the prepress department during the work week since 1995. On Saturdays, however, he has the title of week end day shift supervisor. Two Harris operators, one classified paginator, one proof reader, and one plate maker report to Williams. Since December 4, 2001 Williams has been on disability and has not worked. The record does not indicate when he will return to duty.

Prior to being the weekend day shift supervisor, Williams held other positions including manager, night shift supervisor, assistant day shift supervisor, and advertising services supervisor. A year and a half ago, Williams told Fordyce that while he preferred to work on Saturdays, he no longer wished to be a supervisor.

As a weekend shift supervisor, Williams spent 85% of his time on the shift performing work as a Harris operator. The rest of his time is spent directing the other employees to move the work along. In his capacity as week end day shift supervisor,

Williams has not hired, fired, disciplined, transferred, evaluated, or promoted any employees. Williams does not receive any additional compensation for his role as week end day supervisor and does not consider himself to be a supervisor.

Williams makes assignments to the Saturday shift employees based on the priorities of the shift in terms of publication dates. His main goal is to make sure the work is performed so that the newspapers are printed on time. He makes his assignments based on what work can wait and what work cannot wait. Thus, on Saturday, preparation for Sundays' paper takes priority. When that work is completed, preparation for Monday's paper begins. At times he has to reassign employees if employees working on high priority work requires assistance to meet the deadline. Williams does not need permission to make such re-assignments. However, all of the Saturday shift employees are qualified to perform each other's jobs. Williams also has no authority to grant time off or to direct that employees work overtime. If he believes the working of overtime is warranted, he must seek approval from a supervisor.

On Saturdays, Williams may have to contact a supervisor 2 or 3 times with problems that arise. The Saturday paper is somewhat more complicated due to the job descriptions printed on Saturday for the Sunday paper. In addition, most of the employees assigned to work Saturdays are less experienced than other department employees. When Williams calls a supervisor it may be to inform the supervisor of what he is doing, or in the case of a major problem to find out what the supervisor wants him to do about it. For example, if transmission lines between facilities go down when a negative needs to be sent, Williams calls a supervisor to ask whether he should send a shift employee to deliver the negative.

Sometimes Williams checks the work of the shift employees to make sure it is done correctly. For example, if he notices a proof reading error, he directs an employee to make a

correction. With respect to recommending discipline, the record reflects that Williams recommended discipline, other than termination, for an employee who was doing homework on his shift. Fordyce decided to terminate the employee. The record does not establish whether Fordyce conducted an independent investigation regarding the employee's conduct before reaching her decision that the employee should be removed from his position. On another occasion, Williams and several other employees, including then assistant manager Ferris, reported to Fordyce that a certain employee was not performing well. Two weeks later, the employee was terminated. The record does not establish whether the termination was a result of Williams' and the other employees' reports, or whether the Employer conducted an independent investigation regarding the employee's performance prior to termination.

In January and February 1997, when he was advertising services supervisor, Williams issued two employee evaluations. However, since 2000, when he told Fordyce he no longer wanted to be a supervisor, Williams has not performed anymore employee evaluations.

#### ANALYSIS

##### The Prepress Department Employees Who Are Not Represented by the Intervenor Constitute an Appropriate Unit.

In determining the appropriateness of a bargaining unit, the Board first considers the union's petition and whether the requested unit is appropriate. Overnite Transportation Company, 322 NLRB 723 (1996). The Board, however, does not require a union to seek any particular appropriate bargaining unit. *Id.* The petitioned for unit need only be *an* appropriate unit for purposes of collective bargaining, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). Moreover, in

representation proceedings, the unit sought by the petitioner is always a relevant consideration. Lundy Packing Co., 314 NLRB 1042, 1043 (1994). A union is, therefore, not required to request representation in the most comprehensive or least comprehensive unit of employees of an employer. Overnight, supra at 723.

In deciding whether a unit is appropriate, the Board focuses on whether the employees share a community of interest, taking into account wages, hours of work, benefits, supervision, qualifications, training, skills, job functions, contact with other employees, interchange, and collective bargaining history.

In the instant case, a unit comprised of those Prepress Department employees who are not represented by the Intervenor constitutes an appropriate unit. The non-courier Prepress Department employees who are not represented by the Intervenor work on the same floor of the same facility, share similar hours of work, share similar qualifications and skills, share the same supervision, have the same benefits, have daily contact with one another and are functionally integrated in that each prepress classification plays a role in designing the layout of news and advertising for printing by the Employer's press room. Moreover, these employees share the same collective bargaining history of never having been represented by a labor organization.

While it is undisputed that the couriers spend most of their day driving and make a lower hourly wage than the other Prepress Department employees, they utilize the same facility, share similar hours of work, and identical benefits with the petitioned-for employees. Similarly, although they do not possess the same job functions, training, and skills, the couriers share overlapping supervisory hierarchy with other unit employees in the persons of department manager Fordyce and assistant department manager Zavala. For example, Zavala



interviews and hires the couriers; Zavala and Fordyce determine courier routes and schedules; and Fordyce disciplines couriers and supervises their performance reviews. In Boston After Dark, Inc., 210 NLRB 38 (1974), the Board included a courier in a facility wide newspaper unit despite the fact that the courier spent a considerable amount of time off premises and experienced a limited amount of interaction or interchange with other unit employees. The Board noted that although the courier's immediate line of supervisory authority was different, all the unit employees were ultimately answerable to the general manager.

I also note that there is some evidence of couriers being transferred into other Prepress Department classifications, and several Prepress Department employees have, on some occasions, been required to perform courier duties. See Typecraft Press, Inc., 275 NLRB 553 (1985). Further, the couriers and the other employees in the requested unit share a common history of not having been represented by a union.

Finally, as Petitioner is seeking a unit of all employees employed in the Prepress Department who are not part of the Intervenor-Unit, it is seeking essentially a residual departmental unit. Given the showing of a community of interest between the couriers and the other Prepress Department employees in the requested unit, it is appropriate to include them in the same unit. See generally, Hopper Machine Works, 83 NLRB 1007; The Philadelphia Daily News, Inc., 113 NLRB 91 (1955).

Accordingly, for the foregoing reasons I find the couriers share a sufficient community of interest with the other Prepress Department employees to warrant their inclusion in the unit.

With respect to the placement of the six prepress department employees currently represented by the Intervenor, and covered by a collective agreement, I note that both the

Employer and Petitioner have stipulated that the six employees represented by the Intervenor should not be included in any unit found appropriate herein. In addition, the Intervenor also contends they should not be included.

Inasmuch as I have found that the requested unit is appropriate, and no party seeks to include the six employees currently represented by the Intervenor in the requested unit, it is unnecessary for me to reach the issue of whether the Agreement constitutes a contract bar to the instant petition.<sup>6</sup> Moreover, the determination sought by the Employer that the Intervenor has herein waived its right to represent any current or future Prepress Department employees, other than the six employees currently represented by it, is not an appropriate matter for this representational proceeding

#### The Supervisory Status of Newman, Kelly, Martin, and Williams

Section 2(11) of the Act defines a supervisor as an individual who possesses “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” The possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to establish supervisory status, provided that such authority is exercised in the employer’s interest and involves the use of independent judgment in a manner that is more than routine or clerical. Harborside Healthcare, Inc., 330 NLRB No. 91 (2000); Hydro Conduit Corp., 254 NL:RB 433, 437 (1981). The party asserting that

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<sup>6</sup> I note that in order to address the contract bar issue, Petitioner filed a second, identical petition, Case 32-RC-4972, which was filed within the Agreement’s window period. By letter dated April 18, 2002, the Acting Regional Director suspended further proceedings in Case 32-RC-4972 pending the final disposition of the instant petition.

certain individuals are supervisors under Section 2(11) of the Act bears the burden of proving their supervisory status. Bennet Industries, Inc., 313 NLRB 1363 (1994); Tuscon Gas and Electric Co., 241 NLRB 181 (1979); NLRB v. Kentucky River Community Care, Inc., 121 S.Ct. 1861 (2001).

Because supervisory status removes individuals from some of the protections of the Act, only those individuals vested with “genuine management prerogatives” should be considered supervisors and not “straw bosses, leadmen, set-up men and other minor supervisory employees.” S. Rep No. 105 Cong. 1 Sec. 4 (1947); Ten Broeck Commons, 320 NLRB, 806, 809 (1996). Finally, the Board directs that supervisory status not be found “whenever the evidence is in conflict or otherwise inconclusive on a particular indicia.” Phelps Community Medical Center, 295 NLRB 486 (1989).

The supervisory status of Angela Newman, Jim Williams, Rick Martin, and Joan Kelly is in dispute. The Union contends that they are not supervisors within the meaning of the act, while the Employer contends that they possess and exercise Section 2(11) authority. There is evidence showing that these four individuals possessed and/or exercised some of the type of authority that may constitute supervisory authority. For the reasons set forth in greater detail below, I have concluded that I cannot make a determination of the supervisory status of these four individuals based on the record evidence, which, contains conflicting testimony on some issues and lacks sufficient evidence regarding the amount of discretion that was exercised by these individuals in carrying out their authority. Therefore, Newman, Kelly, Martin and Williams will be permitted to vote subject to challenge.<sup>7</sup>

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<sup>7</sup> I note, as secondary indicia of nonsupervisory status, that if Newman, Kelly, Martin, and Williams were found to be statutory supervisors in addition to Zavala, Fordyce, Anderson-Jeys, Prasad, and Smith, stipulated supervisors, there would be a rather high ratio of 9 supervisors to about 30 supervised employees.

Angela Newman

Although the evidence shows that Newman writes and distributes employee reviews and assigns employees to the runs of absent employees, the record does not establish that she exercises independent judgment in performing these duties. Thus, although she writes the reviews, her authority to evaluate employees is sufficiently circumscribed by the requirement that the reviews must be submitted to Fordyce for revisions and corrections before the evaluation is finalized and presented to the employee and by the new requirement that a manager be present when the review is read to the employee. Also, there was no indication in the record that the reviews drafted by Newman were ever used as the basis of action with respect to any courier's job status or pay. Section 2(11) does not include "evaluate" in its enumeration of supervisory functions. Thus, when an evaluation does not, by itself, effect the wages and or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor. See Elmhurst Extended Care Facilities, 329 NLRB No 55 (1999); Ten Broeck Commons, 320 NLRB 806, 813 (1996).

With respect to the assignment of an absent or delayed courier's runs to another courier, the record does not establish how Newman determines which couriers will receive the extra runs. She may follow a list or merely assign the first available person, or she may assess the difficulty of the run and the strengths of the courier. Under these circumstances, it cannot be presumed that she exercised independent judgment in making these assignments. In North Shore Weeklies, 317 NLRB (1995), a case in which the Board concluded that pressroom foremen were not the statutory supervisors of their crew members, the Board states that where the record does not reveal the particular acts and judgments that make up the assignment or

direction of work, it cannot be concluded that disputed employees are exercising statutory authority.

With regard to granting employee requests for time off, there was contradictory evidence with the respect to the role Newman plays. However, even assuming that she checks to see whether there are enough couriers to cover the runs during a particular time, before she submits a vacation request to Fordyce, there is no evidence that she does anything more than make a clerical review by reading the schedule to see how many runs there are versus how many employees are available to run them. As such it cannot be presumed that Newman exercises independent judgment in processing vacation requests.

The record does establish that Newman is authorized to determine whether couriers will be assigned overtime or whether a courier's delivery should be rescheduled to avoid having to assign a courier to work overtime. The record further establishes that she does not consult with anyone before she makes the determination. However, the record does not establish whether there is an established policy/procedure regarding such determinations, and if there is whether she implements it almost mechanically, or whether she is exercising a significant amount of discretion in carrying out the policy/procedure. Thus, the record did not establish that she has the authority, based on her own judgment, to eliminate a delivery when the item to be delivered is needed to prepare an advertisement for publication the same day. It is more likely that she can only eliminate a delivery where material is not required immediately. However, the record does not reveal Newman's particular acts and judgments that make up her decision to require overtime or to eliminate a delivery. Similarly, while the record indicates that she last directed that overtime be worked on February 28, 2002, the record does not indicate whether she exercises this authority on a sporadic or regular basis.

Regarding the asserted authority of Newman to discipline employees, the record appears to establish that Fordyce, rather than Newman, exercises independent judgment in disciplining the couriers. Thus, Fordyce directed Newman to orally reprimand the employee who took a break during working time. Newman did not assess the situation and independently take the matter up with the courier. Rather she merely reported the incident and asked what she should do. Fordyce was the decision maker, while Newman simply did what she was told and took notes of what had transpired. Newman essentially acted as a conduit of management's authority. See Blount Brothers Corporation, 291 NLRB 242 (1998). With respect to the written discipline Newman signed, she did not raise the issues with Fordyce that resulted in written discipline. She did nothing more than sign write up forms prepared by Fordyce and sit silently by when it was presented to the couriers. Thus, the record does not establish that she possesses the actual supervisory authority to decide whether an employee should be disciplined and what remarks should be directed toward the employee as part of the discipline. The record also does not establish that she has ever effectively recommend such disciplinary action.

Given the overall authority of Zavala and Fordyce to hire, fire, assign, schedule, discipline, and evaluate the couriers, and given the contradictory, ambiguous or incomplete evidence concerning her authority, I cannot find on this record as a whole, that Newman is a Section 2(11) supervisor. See North Shore Weeklies, *supra*. at 1129. Accordingly, I find that there is insufficient evidence to establish that Newman is a supervisor within the meaning of Section 2(11) of the Act and she shall be permitted to vote subject to challenge.

Joan Kelly

The record establishes that prior to January 2002, Kelly had the authority to evaluate layout clerks, although there is no indication that the evaluations were used in any way to effect employee status or pay. See Ten Broeck Commons, supra. Kelly recommended that an employee be terminated, the record does not establish whether that recommendation triggered an independent investigation by management. Thus, the record does not establish whether Kelly's recommendation was effective. See Esco Corporation, 198 NLRB 837, 839 (1990). Kelly also had the authority to issue attendance write ups in February and July 2001. It is not clear however, whether issuing such write ups is essentially mechanical in nature; for example, based on the number of absences within a set period of time, or whether issuing such write ups requires the exercise of significant discretion. It is also not clear whether Kelly still possesses such authority.

There is much conflicting evidence in the record regarding the effect of the Employer's November and December reassignments and the January 2002 management reorganization on the responsibilities of the individuals whose 2(11) status is at issue here, and I do not make any credibility findings in that regard. However, it is undisputed that since the time that Kelly contends she was told she was no longer a supervisor, Prasad has been assigned to the position of layout coordinator, a position the Employer stipulated to being a supervisory position. That raises the question as to whether the 5 layout clerks now require Section 2(11) supervision by both a layout coordinator and a layout supervisor. Moreover, since the time that she contends she was told she was no longer a supervisor, Kelly has not performed evaluations, assigned employees, directed employees, disciplined employees, effectively recommended such actions, or otherwise exercised any supervisory authority. Although the record indicates that Miller told Kelly that he still considered her to be a

supervisor, his perception of her status is not dispositive of whether she in fact possesses and exercises statutory authority. Kelly's testimony indicates that she is currently performing work as a layout clerk with some type of authority, unspecified in the record, to be responsible for solving technical problems in layout. Zavala's testimony indicates that Kelly is or will soon be training other employees in pagination and that ultimately she will be relieved of her responsibilities as layout supervisor and become the supervisor of the paginators, at which point Prasad will take on Kelly's former role as layout supervisor. Under these ambiguous circumstances, Kelly's current status as a 2(11) supervisor has not been adequately established and her future status as a 2(11) supervisor of the paginators is merely speculative, inasmuch as the record indicates that she has not yet assumed those responsibilities. See Phelps Community Medical Center, 295 NLRB 486 (1989); Sears, Roebuck Co., 304 NLRB 193 (1991) (conclusionary statements made by witnesses in their testimony, without supporting evidence, does not establish supervisory authority.) Accordingly, Kelly shall be permitted to vote subject to challenge. This finding is particularly warranted where, as the record reflects, the Employer was in the midst of instituting departmental changes in management and supervisory assignments.

#### Rick Martin

As noted above, the record establishes that Martin has no authority to hire, fire, transfer, layoff, recall, or promote employees, and does not have the authority to effectively recommend such actions. His primary authority relates to the direction of work of Prepress Department employees. It appears from the record that these employees are assigned, in large part, based on their very specific skills and job functions. Thus, there appears to be no need at the beginning of the shift for Martin to determine which employee will perform a particular



task. Although Zavala testified that, once the shift has begun, Martin has the authority to re-assign work among the other night shift employees, and that he once had the opportunity to select an employee to make a courier delivery, such evidence does not necessarily establish statutory supervisory authority. Thus, in North Jersey Newspapers Company, 322 NLRB 394 (1996) the Board found that press foreman who had the authority to re-assign and rotate crew employees were not statutory supervisors. The Board found that such reassignment and rotation of employees did not demonstrate the exercise of independent judgment. At best, it indicated a routine authority typical of a nonsupervisory leadman rather than true supervisory authority within the meaning of Section 2(11). The record does not include sufficient evidence to determine whether Martin exercises significantly greater discretion than did the foremen in the North Jersey Newspapers Company case.

Under these circumstances, Martin's direction and assignment of night shift employees does not appear to require a significant degree of independent judgment. Moreover, to the extent that he exercises independent judgment, it is circumscribed by the fact that for most of his shift during the week, assistant manager Anderson-Jeys is present, and Zavala is present for about half of his shift. If matters come up after they have left, he calls them. On the week end when he is the only supervisor present, he also regularly calls Zavala and Anderson-Jeys.

With respect to correcting employees' work, the record indicates that Martin gives basic directions for employees to correct mistakes, or to move an advertisement or other material along to the next Prepress Department location for preparation. His direction in these rudimentary circumstances is tied to his overall charge of doing what it takes to get the newspaper out, rather than a result of the use of independent judgment. Moreover, it appears

that he is directing the manner of the other employees' performance of their specific tasks, rather than exercising the supervisory function of responsible direction of the employees themselves. See Kentucky River Community Care, Inc., supra, at 720.

The record also indicates that Martin has the authority to grant approval for employee absences; although, Martin testified that he has never exercised such authority, because these circumstances do not arise on his shift. Assuming that Martin has the authority to approve employee requests to be absent, I note that the evidence does not establish that the granting of such requests would involve an exercise of significant independent judgment, or whether Martin would merely be applying well defined standards. See North Jersey Newspapers Company, supra, at 395.

Similarly, although Zavala testified that Martin has the authority to direct that overtime be worked, there is nothing in the record to indicate that he has actually done so. Rather, he testified that the night shift employees rarely get behind in their work and if they do, he assists them himself. The record also does not show whether the granting of such overtime would require the exercise of significant discretion, or whether Martin would be automatically assigning overtime as needed to meet the preset publishing deadlines.

Similarly, his authority to evaluate employees does not establish the use of independent judgment, because he was required to submit them to Fordyce for revision and correction prior to presentation. Moreover, there was no evidence that Martin's reviews were used in any way that affected employees' standing. See Extended Care Facilities, supra.

Although Martin's exercise of disciplinary authority also appears to be somewhat limited, he did, at least at one point have standing instructions that he could send employees who engage in misconduct home, and allow Fordyce to take corrective action the next day.

While it appears that Martin had the authority to determine whether or not conduct engaged in by an employee constitutes sufficient misconduct to be sent home, the record does not establish what Employer guidelines or factors he would rely on to make such a determination. It is also unclear how many times he exercised that authority. Without this information, it is not possible to conclude that Martin was exercising a significant amount of independent judgment when he had to decide whether to send an employee home. See North Shore Weeklies, Inc., supra, at 1128. Moreover, because of the conflicting testimony on this issue, it is not clear that Martin continues to have the authority to send employees home.

Under these circumstances, I have concluded that the Employer has not met its burden of establishing that Martin exercises sufficient supervisory authority to warrant his exclusion from the unit. See Adair Standish Corporation, 290 NLRB 317, 322-323 (1988); North Jersey Newspapers Company, supra. Thus, Martin will be permitted to vote subject to challenge.

#### Jim Williams

The record reflects that weekend (Saturday) day supervisor Jim Williams has no current authority to hire, fire, promote, evaluate, transfer, layoff, or recall employees, and that he has no authority to effectively recommend such actions.<sup>8</sup> With respect to directing the work of the employees, as in the case of night shift supervisor Martin, employees' initial work assignments appear to be determined by the very specific skills and job classifications of the Prepress Department's employees: ad operators, image technicians, proof readers, etc. Thus, there would appear to be no need at the beginning of the shift for Williams to determine which employee will perform a particular task.

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<sup>8</sup> It appears that he may have had such authority when he held other positions with the Employer.

In determining what particular material employees will process first, Williams simply makes assignments according to established department publication priority. For example, material that is to be included in the Sunday edition must be given assignment priority over material to be included in the Monday edition. Assignments based on such considerations do not require the exercise of independent judgment. In situations where an employee is absent and Williams needs someone to perform that person's work, the record indicates that Williams is not authorized to independently assign a replacement. He must make a request of management for permission to obtain a replacement. In sum, the evidence does not establish that the type of day to day work direction given by Williams, including work assignments and his correction of employee proofreading and other errors, is anything more than rudimentary. See Injected Rubber Products, 258 NLRB 686, 692 (1981).

With respect to recommending discipline, the record reflects that Williams recommended discipline, other than termination, for an employee who was doing homework on his shift. Notwithstanding Williams' recommendation, Fordyce terminated the employee. Fordyce's action would appear to be a rejection of Williams' recommendation. Even if Fordyce's action were not deemed to be a rejection, the evidence indicates that Fordyce independently evaluated the merits of Williams' recommendations and exercised her authority to over rule Williams' judgment. With regard to Williams' other recommendation that Fordyce take disciplinary action against an employee, the employee was ultimately terminated, but only after complaints from other employees and Assistant Manager Ferris. Thus, the evidence regarding Williams' role in effectively recommending the discharge of these employees is inconclusive. In similar circumstances, the Board has inferred that the ultimate decision to terminate was made after independent investigation by management. See

Northcrest Nursing Home, 313 NLRB 491, 497 (1993); North Shore Weeklies, Inc., *supra*, at 1129. Accordingly, I shall permit Williams to vote subject to challenge.

### CONCLUSION

Based on the record and the analysis above, I conclude that the employees in the petitioned-for unit, including the couriers, share a community of interest and that the petitioned-for unit is an appropriate unit. I have excluded the six Intervenor-Unit employees because their separate collective bargaining history establishes that they need not be included in the petitioned-for unit and because no party was seeking to include them in the unit. Finally, I find that I cannot determine from the record whether Newman, Kelly, Martin, and Williams currently possess sufficient supervisory indicia to warrant their exclusion from the unit, and I am therefore directing that they be permitted to vote subject to challenge.

The following employees of California Newspaper Partnership d/b/a ANG Newspapers constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act<sup>9</sup>:

All full-time and regular part-time pre-press department employees including leads, proof readers, image techs, couriers, Mac operators, Harris operators, strippers, paginators, layout employees, typists, platemakers, readers, and advertising services employees, employed at the Employer's facility located at 4770 Willow Road in Pleasanton, California, excluding all employees who are covered by the Employer's collective bargaining agreement with Northern California Media Workers Guild, Typographical Union CWA Local 39521, office clerical employees, guards, and supervisors as defined by the Act.

There are approximately 30 employees in the unit.

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<sup>9</sup> Although the petition names the classifications of floor runners, graphic artists, newsmaker paginators, and mailroom clerks, the record established that the Employer does not employ employees in those classifications at the Facility. Accordingly, I do not include those classifications in the unit found appropriate herein.

### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>10</sup> Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 583, AFL-CIO.

### LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have

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<sup>10</sup> Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359, 361, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before May 10, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington, D.C., by May 17, 2002.

Dated at Oakland, California this 3<sup>rd</sup> day of May, 2002.

/s/ Veronica I. Clements  
Veronica I. Clements  
Acting Regional Director  
National Labor Relations Board, Region 32  
1301 Clay Street, Suite 300N

Oakland, California 94612-5211

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